IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

ARBITRATION PETITION NO.52 OF 2007

M/s.Biostadt India Limited — Petitioners
vs.
Vishal Traders through Vishal Distributors Pvt.Ltd. — Respondents

Ms.Mamta Sodh with Mr.Y.S.Singh for the petitioners.

Mr.Riyaz Chagla i/b.Mr.R.Y.Talashikar for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 27th April, 2007

P.C.

The present petition has been filed under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "Arbitration Act") on the foundation that there is C & F agreement dated 1.4.2004 between the parties.

2. Admittedly, there is an agreement between the parties and as per the agreement itself the area of business is at the State of Punjab and not the Uttar Pradesh. Admittedly there is an arbitration clause which is reproduced below:

> **"14. ARBITRATION.**
>
> Any dispute or difference which may at any time arise between the parties hereto as to the construction meaning or effect or as to any clause, matter or thing herein contained or as to the rights or liabilities of the

> parties aforesaid hereunder shall be referred to Arbitration and a sole Arbitrator mutually agreed upon between the parties shall be appointed for the aforesaid purpose, under and in accordance with and subject to provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof. It shall be obligatory for the sole Arbitrator to pronounce a reasoned award and the award in any such Arbitration shall be made a rule of the High Court of Judicature at Bombay or any other Court of competent jurisdiction at the instance of either party and the venue of such Arbitration shall be in Mumbai."

3. The learned counsel for the respondents, however, objecting to the jurisdiction of this Court. In view of the admitted position on record that the basic agreement which the petitioners have relied upon, has nowhere dealt with the agency, as contemplated under the agreement, for Uttar Pradesh.

4. Para 5 of the petition which is reproduced below makes the thing very clear:

> "5. As per the covenant clauses and conditions contained in the C & F Agreement, it is agreed that the area covered by the respondent for clearing storing, forwarding of the Petitioner's product shall be exclusively in the State of U.P. and the Agreement shall be for a period of 3 years commencing from 1st April, 2004 to 31st March, 2007"

5. The submission of the petitioners is that though the agreement is referring to Punjab but the intention of the parties to have the agency of Uttar Pradesh. On the

face of record, admittedly there was no correction made to the said agreement. The petitioners themselves by letter dated 15.2.2007 informed to the respondents that the respondents had agreed to act as clearing agent for the territory of State of Uttar Pradesh, but "wrongly mentioned State of Punjab" in respect of the products as stated in the said agreement.

6. Considering this undisputed position on record, at this stage, I am of the view that unless it is decided the existence of the said agreement for Uttar Pradesh as stated and/or; even the validity of the agreement and/or surrounding question, the petitioners cannot invoke Section 9 Petition for any relief as prayed in the present petition. The petitioners will be at liberty to raise all such questions in an appropriate proceedings including under Section 11 of the Arbitration Act.

7. Taking all this into consideration, I am of the view that the petition under Section 9 of the Arbitration Act is not maintainable. The same is therefore rejected.

[ANOOP V. MOHTA,J.]